

The Issuance of the Supreme Court Regulation No.2 Year 2015 Concerning the Settlement Procedure of Small Claim: Challenges to Realize the Affordable, Simple, Prompt and Efficient Principle

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(Abstract)

Small claims court (procedure) is well established and utilized effectively for filing a simple and inexpensive civil cases lawsuit. In Indonesia, the small claims court procedure was established under the Supreme Court Regulation No. 2 Year 2015 regarding the Settlement Procedures of Small Claims. Compared to the normal civil procedural law, the small claims procedure is relatively simple and is subject to a strict time frame. Despite, it should be noted that the ordinary civil procedural law would still apply to matters that are not stipulated under this Supreme Court Regulation. After four years since the issuance of this Supreme Court Regulation, several stakeholders recently reviewed the implementation of this Supreme Court Regulation. In addition, several other requirements must be satisfied by disputing parties before they can utilize the small claims court. The provisions concerning the limitation of claims value, related with disputing parties must be domiciled within the same first instance court jurisdiction and also that any claim made does not concern any dispute over land rights or encompass anything that needs to be examined under the jurisdiction of a special court (i.e. commercial court, industrial court, etc.) needs to be reviewed. These requirements become obstacle for the Supreme Court Regulation to realize the affordable, simple, prompt and efficient principle. Furthermore, these requirements can be challenges that need to be addressed and corrected to provide a solution so that the objective of issuing this Supreme Court Regulation can be achieved.

Keywords : *Challenges, Supreme Court Regulation, Civil Litigation Principles*

1. Introduction

1.1 Background

Access to justice based upon the basic understanding that people should be able to rely on the applicable law. The importance in civil justice system is related with how people are guaranteed to settle a civil case without a complicated process, time-consuming and not affordable. In the context of civil justice, a protracted procedural law process due to the existence of several stages that will be passed if there are parties who submit legal remedies, both appeal and cassation until the judge issues verdict that are legally valid and binding force. Thus, justice seekers avoid civil litigation to settle legal disputes, especially to settle civil cases with

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small claims. In Indonesia, in court civil cases settlement through litigation is still using the provisions in HIR¹ and RBg² as a source of civil procedural law. The use of legacy procedural law during the colonial period shows a delay in legal politics in the development of civil procedural law in Indonesia. Existing procedural law is inadequate to face some challenges in the development of justice in the present. There are several facts in which many cases filed into the court were settled with a long process because the completion phase of the case settlement mentioned in the HIR and RBg is not that short, especially when entering the phase of submission of the evidence and evidentiary phase by the parties. Thus, cases with small claims value will be examine with a complicated, time-consuming and not affordable process. This has led to the proverb voiced in the society about justice in Indonesia that mentioned “demanding a chicken loses cows”, which means the true value of losses in a case is not considerable but if settled through the judiciary process in court will spend more than the loss suffered initially. This condition is not in accordance with the affordable, simple, prompt and efficient as a principle of organizing the judicial power mentioned in the Article 2 paragraph 4 of the Act No. 48 Year 2009 on Judicial Power. The following data is the number of cases from 2010 to 2015 :

Table 1. The number of cases from 2010 to 2015.

No	Year	The Remaining Cases on Previous Year	The Number of Incoming Cases	The Number of Burden Case	The Completed Case	The Rest of the Case
1.	2010	8,835	13,480	22,315	13,891	8,424
2.	2011	8,424	12,990	21,414	13,719	7,695
3.	2012	7,695	13,412	21,107	10,995	10,112
4.	2013	10,112	12,337	22,449	16,034	6,415
5.	2014	6,415	12,511	18,926	14,501	4,425
6.	2015	4,425	13,977	18,402	14,452	3,950

Source : Tabel 3.11 Laporan Kinerja Instansi Pemerintah Tahun 2016, Mahkamah Agung Republik Indonesia (Table. 3.11 of Performance Report of the Government Agencies Year 2016, the Supreme Court of the Republic of Indonesia).

The table above is the data that is released by the Supreme Court as the settlement proceeds as expected and conform to the target expected by the Supreme Court. However, when looking at the number of incoming cases, there are some of those cases are cases with small claims resolved by a civil procedural law in accordance with the HIR and RBg. The provisions given regarding this period of time for the settlement of a case it turns out that there are still cases which have not been implemented yet by paying attention to these principles. The process will be ineffective when viewing such facts is attributed to the affordable, simple, prompt and efficient principle. There are still thousands of cases (the rest of the cases) every year from 2010-2015 that cannot be resolved completely yet. The data above is used as a background that the Supreme Court issues Supreme Court Regulations as an effort to resolve cases with small claims value through a simple and prompt procedure. A long and complicated procedure is unprofitable to settle civil cases that require quick resolution, especially for disputes with small

claims value.

The implementation of the judiciary is carried out with the affordable, simple, prompt and efficient principle can open up access for the society to obtain justice. The development of legal relationships in the economic, business activities and other civil services in society requires the affordable, simple, prompt and efficient dispute settlement procedure. However, the settlement of civil cases as regulated in the HIR and RBg is done without differentiating the claim value and without simplification of examination. The application of affordable, simple, prompt and efficient principle in civil case settlement is needed as well as the binding force of the court verdict. This procedure is known as small claims court, namely civil case settlement through the court with affordable, simple and prompt procedure to reduce case settlement costs, which procedure is different from the procedure that used to settle civil cases in general. Small claims court were intended to solve these problems by providing greater access to the court system for the average citizen.³

In Indonesian Judicial System, legislation regarding procedural law made by legislators who are the People's Representative Council of the Republic of Indonesia. Merely HIR and RBg are legacy legislation products from the colonial period which are still enforced based on the Indonesian Constitution 1945. In addition, the Supreme Court as the highest judicial institution in Indonesia can also issue regulations only related to procedural law. Its constitutional basis in section IX on the Article 24 of the Indonesian Constitution 1945 which is mentioned :

- Paragraph (1) The judicial powers shall be independent with the authority to organize the judiciary in order to uphold law and justice.
- Paragraph (2) The judicial powers shall be carried out by a Supreme Court and by its subordinate judicatory bodies dealing with general, religious, military, state administrative judicial fields, and by a Constitutional Court.

As the implementation of the Article 24 of the Indonesian Constitution 1945, then it is issued the Judicial Power Act and the Supreme Court Act which gives authority and functions to the Supreme Court as the highest judicial institution. As stated in the Article 79 of the Act No. 14 Year 1985 concerning the Supreme Court mentioned that the Supreme Court has regulatory function and authority to issue Supreme Court Regulation. If there are things that have not been sufficiently regulated in the procedural law and as a complement to fill in the shortcomings or legal vacuum, the Supreme Court can establish procedural regulation that are deemed necessary for the smooth operation of the judiciary. Hence, in the mid-2015, on 07th August 2015 Supreme Court issued the Supreme Court Regulation No. 2 Year 2015 concerning the Settlement Procedure of Small Claims. The issuance aims of this regulation to provide access to justice for justice seekers through the establishment of informal and simplified proceedings where expenses and delay should be greatly reduced. • Self-representation and a simplified version of due process, where a basis of this model.⁵ The effort of this regulation issuance, it can be seen that the Supreme Court is not only issuing the Supreme Court Regulation for short

term purposes or in the sense of having a small claims court regulation in the regulatory system on the dispute settlement procedures in Indonesia but also to provide fairness and the due process of justice. In a state which adheres common law system that used and applied this concept, the cases are not restricted by the type of civil cases, rather it is limited by the amount of claim value (every country has different ranges of the amount of claim value). In Indonesia, besides being determined by claim value, it is also determined by types of civil cases (there are special civil cases which are jurisdiction of the Special Court) and other requirements. Adopting a judiciary concept from different legal system and implementing it in the form of regulations should be undertaken primarily by legal culture and country circumstances. The notable thing of adopting a judiciary concept from different legal systems is how the concept is set forth in a regulation later can provide assurance of fairness, legal certainty and expediency to the society.

The affordable, simple, prompt and efficient principle is an important principle in dispute settlement/case settlement process and as one of the important principles in procedural law and justice system in Indonesia. This principle encourages the stability of law enforcement, however, the existence of this principle cannot be applied easily because many civil cases that require several stages of examining/hearing and evidentiary processes of the parties. This leads to more piles of cases in court since the procedure of civil cases settlement cannot be accelerated and must follow the process until the judges make a decision/verdict or until the parties agree to peace and end the dispute. By the issuance of this Supreme Court Regulation, there is a reduction in the accumulation of civil cases in court, although the issuance purpose of this Supreme Court Regulation is fulfilled, but there are some challenges that should be resolved. This is as essentially, the spirit of every laws and regulation about the procedural law/litigation process is on the principles itself. Indeed, when this principle can be met, the problem of accumulation cases in Indonesia certainly can be reduced significantly. The accumulation of cases occurred due to civil cases filed before the issuance of this Supreme Court Regulation using civil cases settlement procedure based on HIR and RBg. There are many cases filed in the First Instance Court and seeing from the number of Judges in the First Instance Court, the civil cases settlement which should be settled for 5 months will be resolve more than 5 months. This often occurs in the First Instance Court located in the big cities where business activities and economic growth are move rapidly. Since the issuance of this Supreme Court. Regulation, small claim cases have been resolved through this procedure within 25 days and it is more effective than resolving cases using procedures in the HIR and RBg. After the issuance of this Supreme Court Regulation, there are several provisions which become shortcomings of this regulation, such as:

- Article 3 sub-article 1 claim value of IDR 200,000,000 is still too low to reach claim value of civil cases that are common in Indonesia related with business and commercial civil cases.
- Article 3 sub-article 2 Letter (a) states that: cannot suing/filing using small claims procedure when the cases where the dispute settlement is conducted through a particular court/special

- court. Letter (b): cannot suing/filing using small claims procedure about land rights disputes.
- Article 4 sub-article 3 states that the domicile of the plaintiff and the defendant are in the same court jurisdiction.

The shortcoming contained in the article of this regulation above constitute challenges to be faced. Whether the challenges that arise after the issuance of this Supreme Court Regulation will become an obstacle in realizing the affordable, simple, prompt and efficient principle? what needs to be addressed so that these principles can be realized appropriately?

1.2 Literature Review

Related to the issuance of the Supreme Court Regulation No. 2 Year 2015 concerning the Settlement Procedure of Small Claim, there are articles that have a common theme in Indonesia, as follows:

1. *Gugatan Sederhana Dalam Sistem Peradilan Di Indonesia* (Small claim in Indonesian Justice System) by Nevey Varida Ariani, is an article in *Jurnal Penelitian Hukum De Jure* (Journal of Legal Research De Jure) Volume 18 No. 3 Year 2018. The main subject of the discussion is how the application of a small claim lawsuit in Indonesian legal system
2. *Penyelesaian Sengketa Gugatan Sederhana Pasca Lahirnya Peraturan Mahkamah Agung No. 2 Tahun 2015* (A Dispute Settlement by Small Claim Lawsuit after the Enactment the Supreme Court Regulation No. 2 Year 2015) by Wardah Humaira, is a bachelor's degree Thesis of Islamic State University Jakarta. This paper describes in terms of judicial practice regarding the implementation of the small claim lawsuit procedure. This paper compared several different court verdicts regarding the time period for settling civil cases in accordance with what was determined in the Supreme Court Regulation.
3. *Penyelesaian Sengketa Melalui Small claims court* (Dispute Settlement Through Small claims court) by Septi Wulan Sari, is an article in *Jurnal AHKAM* (AHKAM Journal) Volume 4 No. 2 Year 2016. This paper describes in general the dispute settlement through the small claims court. The main subject in this paper is describing small claims procedure set forth in the Supreme Court Regulation.

There are no similarities from these preceding works but can be used as references. This article more focused on access to justice, what challenges are faced after the issuance of this regulation related with the affordable, simple, prompt and efficient principle. The structure of this article will commence with the introduction in section 1. describes the circumstances of civil cases settlement in Indonesia which aims to seek the settlement with the affordable, simple, prompt and efficient principle. Section 2. elaborates the judicial system and small claims procedure in Indonesia. Section 3. challenges after issuance the Supreme Court Regulation Number 2 Year 2015 concerning the Settlement Procedure of Small Claim. Section 4. is the conclusion and recommendation.

2. Judicial System and Small Claims Procedure in Indonesia

2.1 Judicial System in Indonesia

The characters of the law state in Indonesia can be seen, among others: First, the law must be made in its positive form, namely in the form of “written” in order to ensure the certainty of the applicability in society/people of the state. Secondly, the law (called “*ius constitutum*” or “*lege*” means an ordinance which has been enacted as a national law in Indonesia), must be the result of a process of consensus made directly or through the representatives of the people within the framework of the state (legislation process). Third, the law which has been realized in the form of the act or laws and regulations shall be binding to all citizens and the nation and it is enacted as a national law, defeating any others normative and/or local rules which have not been agreed upon through the legislation process.

The Republic of Indonesia as a law state provided case/dispute settlement procedure in a judicial system. Under the Article 1 Sub-Article 1 of Act Number 48 Year 2009 on Judicial Power states that judicial power is an independent power to organize a judicial body to enforce law and justice based on “*Pancasila*”⁶ and “*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*”⁷ for the implementation of a law state of Indonesia. Regarding the judicial power, under the Article 24 of the Constitution of the Republic of Indonesia Year 1945, provides that judicial power shall be undertaken by: a). Supreme Court and its Judicial Bodies under the Supreme Court and b). Constitutional Court.

There are procedures that must be executed in the settlement of civil cases in court, this procedure is one of the formal juridical aspects that the judge must take to decide on the settlement of a civil case. Examination procedures of civil case in court conducted by the Judges are generally regulated in the HIR and RBg. In Indonesian judicial system, dispute/case proceeding/hearing in court take place in two levels, namely: 1). The first instance court and the appeal court are authorized to examine the facts so that the verification and evidence processes are necessary, 2). While the Supreme Court is a court for filing cassation.

2.2 Small claims court in Indonesia

The number of civil cases/disputes that occurred in Indonesia is a consequence of business and economic development. This requires the existence of a procedure that can solve the case with a faster process but does not rule out the applicable laws and regulation. The idea was to have flexibility to use more holistic approaches to problem solving and dispute resolution activity than what is typical in regular courts.⁸ Indeed, civil cases/disputes not only be resolved through litigation process but also can be resolved through Alternative Dispute Resolution, but the cases/disputes settlement through Alternative Dispute Resolution based on the parties' consents. Agreement-based Alternative Dispute Resolution risks power imbalances and a lack of equality of arms as parties are rarely equal. This is particularly true if there is

an absence of legal representation, which is typical in forms of dispute resolution that are less formal than those of traditional courts on the premise that simplified processes facilitate self-representation even if the other side can afford and instructs a lawyer.⁹ Thus, does not automatically the implementation process and the end result provide a binding force to the parties because only based on parties' good faith to implement them. Although it is said that the Alternative Dispute Resolution neither is the popular mechanism of civil cases/disputes settlement, nor provide legal certainty over the parties' written consents in its implementation. The principle of legal certainty expresses, in essence, the fact that parties must be protected "against a threat that comes just from the law, against an insecurity created by law or which the law risks to create ". This principle was established and has been a continuously enriched as well as in matters of protection of the parties' rights.

To ensure legal certainty, in the mid-2015, the Supreme Court issued Supreme Court Regulation Number 2 Year 2015 on the Settlement Procedure of Small Claims. After the Supreme Court Regulation is valid for one semester, the South Jakarta District Court (*Pengadilan Negeri Jakarta Selatan*) the first received the registration of small claims cases. In the case with register number 01/Pdt.G.s/2015/PN.Jkt-Sel, a Corporation Consultant Services Company "Smart Consulting" was listed as a plaintiff. These company filed a lawsuit against his former client "Jasa Tambang Nusantara Ltd." (*PT. Jasa Tambang Nusantara*). The lawsuit was filed because Jasa Tambang Nusantara Ltd was deemed negligent to pay the consultant's fees amounting to IDR 96,000,000/ (approximately ¥ 800,000).

A comparison of civil case settlement procedure between small claims lawsuit based on Supreme Court Regulation No 2 Year 2015 and ordinary civil lawsuit based on HIR and RBg can be seen as follows:

Table 2. A comparison of civil case settlement procedure between Supreme Court Regulation No. 2 Year 2015 and HIR/RBg.

Aspects	Procedure of Small Claims using Supreme Court Regulation No. 2 Year 2015	Ordinary Civil Cases Settlement using HIR/RBg
Maximum claims value	IDR 200.000.000	Not specified
Party's domicile	The plaintiff and the defendant must be domiciled in the same area	The plaintiff and the defendant do not have to be domiciled in the same area
Number of Parties	Each plaintiff and defendant not more than one person, unless they have the same legal interests	Plaintiffs and defendants may be more than one person
Defendant's address	Must know	It must not be known
Case registration	Use a lawsuit form	Making a lawsuit
Submission of evidence	Must be concurrent with case registration	At the time of the trial evidence agenda
Case registration, appointment of judges and court clerks	2 days at the most	7 days at the most
Who examined and gave a court decision	Sole judge	Panel of judges

Preliminary examination	Yes	No
Mediation	No	Yes
Presence of the parties	Plaintiffs and defendants are required to attend each hearing directly, even though they have lawyer	Plaintiffs and defendants are not required to attend each hearing directly.
The consequences of the plaintiff's absence at the first hearing	The lawsuit was declared null and void	The lawsuit was not declared null and void
Case examination/hearing	Only lawsuit and the answer of lawsuit (exception)	demands for provisions, exceptions, reconventions, interventions, replicas, rejoinder, and conclusions
Deadline/time limitation for settlement of cases	25 days since the first examining/hearing	5 months
Submission of verdict	At the latest 2 days since the verdict was pronounced	At the latest 7 days since the verdict was pronounced
Legal remedies and deadline/time limitation for completion	Objection (7 days since judges set the verdict)	Appeal (3 months), cassation (3 months) and judicial review (3 months)
Deadline for registration of legal remedies	7 days since the verdict was pronounced or notified	14 days after the verdict was pronounced or notified

Based on the table above, there are differences in the settlement of civil cases between ordinary lawsuit and small claims. Firstly, in the small claims procedure put more emphasis on the claims value, the time period until making court verdict which is given a maximum 25 days, party's domicile in the same area, plaintiffs and defendants are required to attend each hearing directly, even though they have a lawyer. The Head of the Court will appoint a sole judge to examine small claims assisted by the court clerk. The judge will examine the material of a small claims, assess whether or not the evidence is simple, if the judge believes the lawsuit does not categorized as a smalls claim, the judge issues a rejected decision stating that the lawsuit can't use this procedure and crossing out of the case register and ordering the restitution of the case fee to the plaintiff. With regard to this stipulation, no legal remedy can be made. In the event that the Plaintiff is not present at the first hearing without a valid reason, the claim is declared null and void. If the Defendant is not present at the first hearing, then a second summons is made and on the second trial day the Defendant is absent then the judge decides the case. Secondly, in ordinary lawsuit put more emphasis on evidentiary process, be examined by a panel of judges to obtain appropriate considerations and decisions in more complex civil cases and can file legal remedies.

Since the issuance of the Supreme Court's rules regarding small claims procedures, the number of small claims cases in 2015 are 12 cases and in 2016 are 754 cases, so that the total small claims cases are 766 cases. Percentages of successful cases settlement through small claims court (court verdict) are 520 cases or 68%.¹⁰ Seen from that percentage it can be said that the small claims procedure is effective in resolving civil cases with a small claims value. Some of the shortcomings contained in this regulation need to be addressed and reviewed to obtain more effective results in an effort to realize these principles increasingly achieved.

Due to examine the small claims and compared to the ordinary civil procedural law by HIR/RBg, the small claims court procedure is relatively simple and is subject to a strict time frame. Despite as such, however, it should be noted that the ordinary civil procedural law by HIR/RBg will still apply to matters that are not stipulated under this Supreme Court Regulation.

3. Challenges Faced After the Issuance of Supreme Court Regulation No. 2 Year 2015: A Discussion for Proper Adjustment in the Future

3.1 Domicile of the parties

As stated in Article 4 sub-article 3, to use the small claims court procedure is collided with the requirement that the litigants must be in same domicile. The domiciled referred to in this regulation is the same jurisdiction of the first instance court. When the parties are not in the same domicile, they cannot use this procedure to settle their case. This provides obstacles in terms of judicial practices, civil actions committed by the parties in relation to business and economic development may not be domiciled in same jurisdiction of the first instance court.

In order to realize the affordable, simple, prompt and efficient principle, the domicile of the parties need to be reviewed again. As comparison of the civil procedural law system in Japan, under the Japan Code of Civil Procedure, a plaintiff may file an action with the court that has jurisdiction over the defendant's domicile or residence.¹¹ In the U.S., the State of New Jersey, a complaint must be filed in the Office of the Special Civil Part of the county where at least one defendant lives or where the defendant business is located¹², as well as the State of California.¹³ Due to cases where the parties are not in the same jurisdiction, the terms of domicile in this regulation are returned to the principle of civil justice system stated in the Article 118 paragraph (1) of HIR and Article 142 RBg namely "*Actor Sequitor Forum Rei*" means the lawsuit must be submitted to the jurisdiction of the court which is in the defendant's domicile.¹⁴ The general rule of *actor sequitur forum rei* draws its rationale from the presupposition that the defendant, as the party being pursued by the plaintiff, should be able to fight on "home ground" where they can most easily conduct their defense.¹⁵ In a civil case, the defendant has an interest in defending himself and protecting the defendant by submitting the lawsuit in the domicile of the defendant is the purpose of this principle. If associated with the provisions of Article 118 HIR and Article 142 RBg, then the domicile determination in the Supreme Court Regulation also stumbled with the "*lex superior derogate legi inferiori*" principle which means lower laws and regulations should not contradict with higher laws and regulations, where the positions of HIR and RBg is higher than the Supreme Court Regulation.

When the obstacle is based on a summoning process that takes a long time, it is necessary to determine new methods/mechanisms on summoning the parties. The summoning process as in the examination of civil cases with HIR and RBg procedure will require 21 days, and

a period of 21 days which is only for the summon process cannot be applied in the small claims procedure, then a solution is needed such as using technology such as official electronic mail or sending a fast track mail by using post office/ by using an official phone. In the U.K (English Law), the summoning process can be done by the court and can also be done by plaintiff (or through plaintiff's solicitor), the plaintiff will make a summons to the defendant where the court might otherwise delay preparation of the summons. There is an interesting thing that can be found and adopted as an attempt to streamline summoning process and at once, to overcome the challenge contained in this Supreme Court Regulation about the domicile of the parties that is summoning process via first class post services.¹⁶ The summoning mechanism by using those ways also simplifies the process of summoning the parties who wish to settle their case through small claims procedure, so that the issue of domicile is not an obstacle to the justice seekers. This is where the Supreme Court should take the function of regulating. When issuing a regulation, it must be considered the intercorrelation between substance, procedure, implementation and its implications. The domicile of the parties and the way to make summons in this regulation needs to be considered, so that filing a lawsuit using the small claims procedure can reach both parties in different domicile.

Similarly, the use of small claims procedures regarding land rights cases/disputes which cannot be resolved through this procedure (Article 3 sub-article 2 letter b) is a challenge that will be faced. Land rights cases/disputes are also based on action against the law or breach of contract. Land rights disputes are disputes arising between parties as subjects of civil law which contain objections or demands of land rights, priority or buying-selling and switchover the ownership. From statistical data on civil cases with objects of land rights cases/disputes, there were 14,446 cases in 2017.¹⁷ The use of the small claims procedure is necessary to reduce the number of civil cases concerning land rights that are filed to the court. Indeed, this Supreme Court regulation has determined the process of preliminary examination (Article 11 sub-article 2 and 3). At this phase, the case filtration is needed, whether a land rights disputes can be resolved through small claims procedures or not. The preliminary hearing process by the judge is able to determine whether this case will be complex, complicated and requires a long evidentiary process or the case can be resolved simply. So that the decision depends on whether the judge will proceed or not by using small claims procedure (the judge will make a judge decree/ "*beschiking*" regarding the preliminary process of the case whether accepted to be examine). In the U.K (English law), the court has the power to order a preliminary hearing in the following circumstances¹⁸: (1) where the court considers that special direction are needed to ensure a fair hearing, but it appears necessary for a party to attend at court to ensure that he understands what he must do to comply with the special directions. (2) to enable the court to dispose of the claim on the basis that one or other of the parties has no real prospect of success at a final hearing. (3) to enable the court to strike out a statement of case or part of one on the basis that it discloses no reasonable grounds to bring or defend the claim.

3.2 The cases that cannot be solved using these small claims court procedure

In Article 3 paragraph 2 letter (a) states that cases where the disputes settlement is conducted through particular/special court and letter (b) states the land rights dispute settlement, cannot be solved using small claims procedure. In civil justice system in Indonesia, the basis for filing a civil lawsuit it depends on two things: an action against the law and breach of contract. There are several categories and authorities for Particular/Special Courts in Indonesia justice system based on laws and legislation, not only specifically concerning criminal cases but also civil cases, such as the Commercial Court and Industrial Relation Disputes Court. Commercial cases and industrial relations disputes are also the types of civil cases settled through Particular/Special Courts and the basis for filing the lawsuit is also based on, as follows:

(1) Actions against the law (*onrechtmatige daad/tort*)

Traditionally, it has been considered that there were four elements which constitute Actions against the law/tort (*onrechtmatige daad*). First, the tortfeasor should be a fault: i.e. he acted either with intent or negligence. Second, the act has to be unlawful. Third, a causal link should exist between the tortuous act and the loss. Fourth, loss should have been incurred.¹⁹ Actions against the law/*onrechtmatige daad/tort* under Article 1365 of the Indonesian Civil Code are any acts committed by violating the law so that because of his actions it causes disadvantage to others. L.C. Hoffman explained that for the existence of *onrechtmatige daad/tort*/, it must be filled with 4 (four) elements: 1). *Er moet een daad zijn verricht* (there must be action), 2). *Die daad moet onrechtmatig zijn* (the act is against the law), 3). *De daad moet aan een ander schade heb bentoege bracht* (the act must cause harm to others), 4). *De daad moet aan schuld zijn te wijten* (the act is due to faults that can be blamed).²⁰

(2) Breach of Contract (*Wanprestatie*/Default of Contract Fulfillment).

Breach of Contract/Default of Contract/*Wanprestatie* is set forth in Article 1243 of the Indonesian Civil Code. A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract, or perform defectively or incapacity himself from performing.²¹ According to J. Satrio, breach of contract (*wanprestatie*) is a condition in which the party does not fulfill his promise or does not fulfill properly and all of which can be blamed on him.²² R. Subekti argued that "breach of contract/*wanprestatie*" is can be: 1). Not doing what he or she has undertaken to do, 2). Implement what has been promised, but not as the promised, 3). Do what is promised but too late, 4). Perform an act which, according to the agreement cannot be done.²³ Due to the small claims procedure settles the civil case, the use of the basis of the lawsuit as mentioned above must still be used as an effort in realizing the affordable, simple, prompt and efficient principle.

3.3 Filing a Lawsuit through Small Claims Procedures by Considering an Appropriate Claims Value

The determination of claim value in this Supreme Court Regulation is not in accordance

with the growth of economic development and business activities yet. In big cities, including the capital city, they have a high level of business activity and rapid economic development. In order to reduce the number of civil cases and maximize the functions of this Supreme Court regulation, the claim value specified in this regulation is relatively low so that the reach of civil cases is insignificant. bearing in mind that in large cities and capitals there are civil cases where the claim value exceeds IDR 200,000,000, it is necessary to make changes to the provisions of at least the claim value for small claims cases to IDR 500,000,000. In addition, responding the challenges in realizing affordable, simple, prompt and efficient principle is to seek the law enforcement process desired by the parties. The important thing from using the small claims procedure is only required on the claim value, as happened in other countries that already have a small claims procedure in the code of civil procedure. As specified in the small claims procedure in other countries, such as Japan which has 3 (three) requirements i.e.:

1. The first requirement (in Art 368 (1) of the Code of Civil Procedure) is that the amount claimed by the plaintiff must be no more than 600,000 yen (whereas summary courts have summary jurisdiction for amounts up to 1,400,000 yen).
2. The second requirement is that the claimant makes a statement for a trial when filing a Small claims case (Art. 368 (2) of the Code of Civil Procedure).
3. The third requirement is that the plaintiffs shall report the number of times in the relevant year that the plaintiff has sought trials and judicial decisions through small claims procedure in summary court where the plaintiff is filing the lawsuit (the plaintiff may be required to disclose the number of actions he or she has filed) (Art. 368 (3) of the Code of Civil Procedure).²⁴

In the U.K., claims in civil court are split into 3 tracks depending on how much the amount of claim value. Claims of up to £10,000 are put in the small claims track²⁵. Based on Rule 26.6, provides for the scope of the small claims track. A claim for a remedy for harassment or unlawful eviction relating, in either case, to residential premises shall not be allocated to the small claims track whatever the financial value of the claim. Otherwise, the small claims track will be the normal track for:

- Any claim which has a financial value of not more than £10,000 subject to the special provisions about claims for personal injuries and housing disrepair claims;
- Any claim for personal injuries which has a financial value of not more than £10,000 where the claim for damages for personal injuries is not more than £1,000; and
- Any claim which includes a claim by a tenant of residential premises against his landlord for repairs or other work to the premises where the estimated cost of the repairs or other work is not more than £1,000 and the financial value of any other claim for damages is not more than £1,000)²⁶

The small claims process is supposed to be simple enough to manage without the help of a solicitor. There shouldn't be lots of witnesses to call or difficult points of law to understand. To be placed in the small claims track, the financial value of the county court claim being presented must be less than £10,000. Common types of small claims court cases as follows: compensation for flawed services and negligent professionals; consumer disputes over defective goods and breaches of contract; landlord and tenant disputes over missing rent or failure to repair the property; non-payment of wages or other debt related disputes.²⁷

In the U.S., each state has different claim value, for example: the State of New Jersey²⁸, New York²⁹, this because those states have own regulation regarding the small claims court procedure. Filing a small claims court lawsuit is a jurisdiction of the Special Civil Court or County Court and the aims of the settlement through the small claims court procedure are the stream lined, simple, and straight forward small claims process was designed to help people with smaller claims avoid tangled and expensive litigation in ordinary civil court as well in the State of California³⁰ and Arkansas³¹. Indeed, when looking at the small claims procedure in *anglo saxon* countries that applied the common law system, they placed a small claims concept based on the requirement that civil cases can be filed into the court using small claims procedures that are restricted by the claim value. The value of a small claims is indeed a requirement in filing a lawsuit through the small claims procedure, therefore, the small claims court is said to be a procedure for settling minor disputes. Notwithstanding the definition of "minor disputes" in terms of the money limit, it must be said that for the reform movement the original importance of the Small claims courts went beyond the individual case to "the court role in the widespread dissemination of justice throughout society."³²

In other countries, the determination and application of small claims procedure for civil cases are based on the claim value and also based on the judge's assessment of whether the civil case, which, although under a certain value, but if in the examination process is deemed to require complicated hearings, the judge may declare that a civil case like this cannot be settled using a small claims procedure. While the provisions in the Supreme Court Regulations in Indonesia is not only using the claim value but also determined by requirements in several Articles. The initial objective of the establishment of this Supreme Court Regulation is to accelerate the settlement proceedings of civil cases with small claims value and decreasing accumulation of cases in court. This is a challenge that should be sought solution because Supreme Court Regulation has provided an opportunity as a law enforcement effort. By issuing the Supreme Court Regulation, the Supreme Court has, indeed, given access to justice, but in order to maximize a regulation it is necessary to see the objective of the establishment of the Regulation. The process of law enforcement and the provision of legal certainty are very important. This greatly affects the trust of the community and the business society.

4. Conclusion and Recommendation

4.1 Conclusion

The Small claims procedure in Indonesia has actually been scheduled to realize the affordable, simple, prompt and efficient principle, although the Supreme Court Regulation has inserted the affordable, simple, prompt and efficient principle into its articles, but there are still some challenges that will slightly obstruct the implementation of this principle into the civil cases settlement process who take place in Indonesia.

The challenges in the implementation of the small claims procedure that must be addressed immediately. First, that the parties can file a lawsuit if they are in the same domicile is not appropriate considering the development of business activities are not only carried out in the same court jurisdiction and filing the small claims lawsuit is adjusted by using the jurisdiction in accordance with what is determined in HIR and RBg. Second, emphasized the use of actions against the law and breach of contract as the basis for filing civil lawsuit without differentiating the types of civil cases. So that any civil cases lawsuit which its claim value in accordance with the specified claim value can be filed to the court for examination and adjudication using the small claims procedure. Third, in rapid economic growth and high-level business activities, the claim value specified in this regulation is relatively low so that the reach of civil cases is insignificant. Considering that in large cities and capital city there are civil cases where the claim value exceeds IDR 200,000,000, it is necessary to make changes to the provisions of at least the claim value for small claims cases to IDR 500,000,000. When this regulation covers the legal needs of the people and the use of small claims procedure can run optimally, the law enforcement process can be seen as what is aspired.

4.2 Recommendation

The aims of the Supreme Court in drafting the Supreme Court Regulation is precise, because there are several simplifications of the process of cases/dispute hearing where the objective is to realize the affordable, simple prompt and efficient principle. The challenges have led to the use of the small claims procedure still not optimal when we compared with the use of the ordinary civil procedure even though the terms and conditions have been met. This is where the importance of justifying/correcting/amending both in terms of legal substance and the legal structure in law enforcement process of this Supreme Court Regulation. The Amendment to this Supreme Court Regulation must be made immediately due to the implementation related to practical obstacles and theoretical incompatibility. The adoption of a legal and judicial concept which has been applied in a country with different legal systems must consider and adapt to the prevailing legal system in the country itself.

Note

¹ Initially entitled “*Reglement op de Uitoefening van de Politie, de Burgerlijke Rechtspleging en de Strafordering onder de Inlanders, de Vreemde Oosterlingen op Java en Madoera*” is a regulation governing the duties of the police, civil procedural law and criminal proceeding in Indonesia for Java and Madura areas which comes into force at 1st of May 1848. HIR is an abbreviation of “*Het Herziene Indonesisch Reglemen*” which means the regulation for Indonesians that have been renewed. HIR still applies only to the provisions of the civil procedural law which is applied to Indonesian citizens who have domicile in Java and Madura areas.

² For outside of Java and Madura, in 1928, the Dutch Colonial Government issued a procedural law for Indonesians called RBG the abbreviation for “*Reglement tot Regeling van Het Rechtswezen in de Gewesten Buiten Java en Madura*” which means a regulation regarding justice in Indonesia for outside Java and Madura areas.

Both HIR and RBG are still in effect in Indonesia based on the Article 1 of the Transitional Rules Section of the Indonesian Constitution 1945 which states that all existing laws and regulations are still in effect as long as the new laws and regulations have not been enacted according to this constitution.

³ Roscoe Pound, *The Administration of Justice in the Modern City*, HARVARD LAW REVIEW 26, 315 (1913).

⁴ Leslie G. Kosmin, *The Small claims court Dilemma*, HOUSTON LAW REVIEW 13, 936 (1975).

⁵ Barbara Yngvesson and Patricia Hennessey, *Small claims, Complex Disputes: A Review of The Small claims Literature*, LAW & SOCIETY REVIEW 9, 222 (1975).

⁶ “*Pancasila*” is the official, foundational philosophical theory of Indonesia and state ground norm contained five principles as follows: Belief in the Almighty God, A just and civilized humanity, A unified Indonesia, Democracy led by the wisdom in a consensus or representatives, Social justice for all Indonesians.

⁷ “*Undang Undang Dasar Negara Republik Indonesia Tahun 1945*” is the Constitution of the Republic of Indonesia.

⁸ Bruce Zucker, And Monica Her, *The People’s Court Examined: A Legal and Empirical Analysis of The Small claims court System*, UNIVERSITY OF SAN FRANCISCO LAW REVIEW 37, 317 (2002).

⁹ Mauro Cappelletti, *Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement*, MODERN LAW REVIEW 56, 290 (1993).

¹⁰ See Tabel 3.27 Laporan Kinerja Instansi Pemerintah Tahun 2016, Mahkamah Agung Republik Indonesia. (Table. 3.27 of Performance Report of the Government Agencies Year 2016, the Supreme Court of the Republic of Indonesia).

¹¹ See Outline of Civil Procedural Law in Japan, available at http://www.courts.go.jp/english/vcms_lf/20140417-civil-design.pdf, last visited 22nd January 2020.

¹² See New Jersey Court, New Jersey Judiciary Small Claims, available at https://www.njcourts.gov/forms/10290_small_claims.pdf, last visited 22nd January 2020.

¹³ “.. in general, you can file your claim in the court where the defendant lives or does business..” see California Court, The Judicial Branch of California, available at <https://www.courts.ca.gov/9745.htm>, last visited 22nd January 2020

¹⁴ See Arthur Taylor Von Mehren, *Must Plaintiffs Seek Out Defendants?The Contemporary Standing of Actor Sequitur Forum Rei*, KING’S COLLEGE LAW JOURNAL 8, 23 (1997-1998).

¹⁵ See Alan Reed, *Optimal Rule-Selection Principles in Anglo-American Contractual Jurisdiction*, TOURO INTERNATIONAL LAW REVIEW 11, 26 (2008). See also HENRY CAMPBELL BLACK, BLACK’S LAW DICTIONARY, DEFINITION OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE ANCIENT AND MODERN, 32, (5th ed 1979).

¹⁶ See NIEL ANDREWS, PRINCIPLES OF CIVIL PROCEDURE, 561-562 (1994).

¹⁷ See Directorate General of the General Judiciary Body of The Supreme Court of The Republic of Indonesia the Statistics of Civil Cases Data, Classification of the Land Rights Cases/Dispute In 2017, available at <https://badilum.mahkamahagung.go.id/publik/statistik-perkara/statistik-perkara-perdata/2512-statistik-perkara-perdata-klasifikasi-objek-sengketa-tanah-tahun-2017.html>, last visited 25th December 2019.

- ¹⁸ STEPHEN M. GERLIS AND PAULA LAUGHLIN, *CIVIL PROCEDURE*, 177 (2001).
- ¹⁹ HIROSHI ODA, *JAPANESE LAW*, 181 (3rd ed. 2009)
- ²⁰ L.C. Hoffman, *Het Nederlands Verbintenissenrecht, eerst deel, De Algemene leer der Verbintenissen* [The Dutch Law of Contract, 1st, General Provision i.e. Agreement] *TWEDE GEDEELTE, DRUK GRONINGEN-DEN HAAG, J.B WOLTERS' UITGEVRS-MAATSCHAPPIJ*, 257-265 (1932).
- ²¹ G.H TREITEL, *THE LAW OF CONTRACT*, 772 (10th ed. 1999).
- ²² J.Satrio, *Hukum Perikatan, Perikatan Pada Umumnya* [Law of Contract, Contract in Generaly] 122 (BANDUNG, ALUMNI PRESS, 1999).
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- ²⁶ Justice, *Part 27 The Small claim Track*, available at <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part27>, last visited 18th January 2018
- ²⁷ County-Court.co.uk, *Small claims court*, available at <https://county-courts.co.uk/small-claims-court/>, last visited 18th January 2018
- ²⁸ The small claims value is for less than \$3,000, Small claims court was created to promote the convenient, prompt, effective and inexpensive resolution of disputes at the grassroots level. The basic purpose of Small claims court is to help people recover small sums of money without having to hire a lawyer. See New Jersey Division of Consumer Affairs, *Small claims court*, available at <https://www.njconsumeraffairs.gov/News/Consumer%20Briefs/small-claims-court.pdf> , last visited 25th January 2019
- ²⁹ Small claims court is an informal court where individuals can sue without a lawyer with the claim value up to \$3,000 in town or village court and \$5,000 in city court. See, New York State Unified Court System, *A guide to Small Claims and Commercial Small Claims in the New York State*, available at <http://www.nycourts.gov/courthelp/pdfs/SmallClaimsHandbook.pdf>, last visited 25th January 2019.
- ³⁰ Small claims courts have an upper limit on the amount of money that a party can claim. You can sue for up to \$10,000, if you are an individual or a sole proprietor. Corporations and other entities are limited to \$5,000. In addition, a party (individuals or corporations) can file no more than two claims exceeding \$2,500 in any court throughout the State of California during a calendar year. See Departement of Consumer Affairs, *The State of California*, available at https://www.dca.ca.gov/publications/small_claims/file.shtml, last visited 25th January 2019. See also Ricardo Lillo, *Access to Justice and Small claims courts: Supporting Latin American Civil Reforms Through Empirical Research in Los Angeles County, California*, *REVISTA CHILENA DE DERECHO* 43,963 (2016), see also California Code of Civil Procedure, Part 1. Of Courts of Justice, Title 1. Organization and Jurisdiction, Chapter 5.5. Small claims court, Article 2. Small claims court (116.220)
- ³¹ Each district court in Arkansas has a division known as Small claims court. This courts are designed to allow individuals to settle certain dispute that are less than \$5,000, while under relaxed rules of procedure and without attorneys. The small claims hearing is a process designed to provide each party with full advantage of the law as a means of settling a minor legal dispute. See Arkansas Attorney General, *Guide to Small claims court*, available at <https://arkansasag.gov/consumer-protection/resources/column-one/legal-resources/guide-to-small-claims-court/>, last visited 25th January 2019
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